IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-839

JOHN MELNIK and
JUDITH MELNIK,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Pursuant to Rule 24(4) of this Court's Rules, FOONBERG & FRANDZEL, a Law Corporation, on behalf of JOHN and JUDITH MELNIK, files this Reply Brief to Memorandum for the United States in Opposition.

1. Petitioners' primary reason for granting the Writ of Certiorari is as follows, "The administrative importance of having the issue

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presented herein be resolved by this Court cannot be adequately stressed and it can only be understated. Every year, hundreds, if not thousands, of taxpayers claim deductions on their tax returns for law school expenses. The Internal Revenue Service is deluged with audits pertaining to this issue. . . . A decision by this Court would be the first decision by this Court on the subject of deducting educational expenses as a business expense. This Court should set the guidelines now to give certainty to an area where certainty is lacking and indecision and litigation abound. Orderly administration of the tax laws mandate that this Court resolve this issue." (Pet. 5-6, 7.) Nowhere in its Memorandum has the Respondent contradicted or challenged Petitioners' contention that the issue involved herein should be resolved by this Court due to the administrative importance of said issue.

2. Respondent has misconstrued Petitioners' major contention. (Resp. 4.) Petitioners do not contend that they are entitled to a deduction for certain educational expenses based on the earlier Regulations. Rather, Petitioners rely on Section 162(a) of the Code (which permits a deduction for the "ordinary and necessary expenses paid or incurred . . . in carrying on any trade or business") and the following Court decisions which interpret Section 162: Welsh v. United States, 329 F.2d 351 (6th Cir. 1964); Williams v. United States, 238 F.Supp. 351 (S.D.N.Y. 1965); Brennen v. Commissioner, 22 CCH Tax Ct. Mem. 1222 (1963); Schultz v. Commissioner, 23 CCH Tax Ct. Mem. 1372 (1964); Kilgannon v. Commissioner, 24 CCH Tax Ct.

Mem. 619 (1965); and Fortney v. Campbell, Jr., 64-1 U.S.T.C., Paragraph 9489 (N.D. Tex. 1964). All of these cases held, interpreting Section 162 of the Code, that agents of the Internal Revenue Service and accountants, pursuant to the facts and circumstances of those cases, were entitled to deduct their law school expenses. Admittedly, these decisions interpreted the earlier Regulations, however, in interpreting those Regulations, those Courts were allowing a deduction under Section 162 of the Code; not a deduction under the Regulations.

Respondent has stated that taxpayers have no vested rights in outstanding Regulations (Resp. 4). In addition, Respondent stated, "Indeed, since Petitioner did not begin his law studies until 1969, two years after the Regulation was amended, he cannot claim that he relied on the old Regulation to his detriment." (Resp. 4-fn. 4.) Petitioner is not claiming that he relied on the earlier Regulations to his detriment. Rather, Petitioner claims that he is relying on the above-stated cases, which cases stated that pursuant to Section 162 of the Code, he would be entitled to a deduction for his law school expenses.

3. Respondent states that the new Regulations substituted an objective standard for the old "primary purpose" test of the earlier Regulation due to the difficulty of applying the "primary purpose" test. While there is no evidence in this case to support the proposition, Petitioners submit that the number of taxpayers who claim deductions for educational expenses under Section 162 of the Code, plus the amount

of litigation pertaining to the objective standards of the new Regulations, has increased, rather than decreased. One need only look at the number of court decisions pertaining to the deduction of law school expenses and educational travel expenses to reach this determination.

4. In Respondent's Memorandum, it is stated, "Here, however, there was little, if any, connection between the law degree and general legal skills Petitioner sought in his job as a field audit agent for the Internal Revenue Service. . . . In the absence of any nexus between Petitioner's business and the law school expenses here involved, they cannot be deducted as an ordinary and necessary business expenses under Section 162." (Resp. 5.) Since the Courts below determined that the Regulation herein was valid, and that Petitioner's law school education qualified him for a new trade or business, neither Court below made a determination as to whether the Petitioner's law school education maintained or improved his skills as an Internal Revenue Service revenue agent. Accordingly, there is no support for the Respondent's just-stated contention in its Memorandum.

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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A Law Corporation

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